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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :24.03.2022

PRONOUNCED ON :18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.359 of 2021

and

CROSS.OBJ(MD)NO.4 OF 2022

and

C.M.P(MD)No.2957 of 2021

C.M.A(MD)No.359 of 2021

The Divisional Manager,
M/s.National Insurance Company Limited,
No.33, K.R.T.Building, Promenade Road,
Cantonment,
Trichy District.

:Appellant/Second Respondent

.vs.

Sanga Pillai(died)

- 1.Malathy
- 2.Mahamuni
- 3.Manimegalai
- 4.Anburaj

:Respondents 1 to 3/Petitioners
:Fourth Respondent/1st Respondent

CROSS.OBJ(MD)NO.4 OF 2022

Sanga Pillai(died)

- 1.Malathy
- 2.Mahamuni
- 3.Manimegalai

:Appellants/Respondents 1 to 3

.vs.

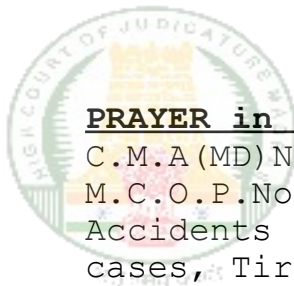
- 1.The Divisional Manager,
M/s.National Insurance Company Limited,
No.33, K.R.T.Building, Promenade Road,
Cantonment,
Trichy District.

:Ist Respondent/Appellant

- 2.Anburaj

:2nd Respondent/4th Respondent

PRAYER in C.M.A(MD)No.359 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988, against the judgment and decree made in M.C.O.P.No.1095 of 2014, dated 13.02.2020, on the file of the Motor Accidents Claims Tribunal, Special Court to deal with M.C.O.P cases, Tiruchirappalli.



PRAYER in CROSS.OBJ(MD)NO.4 OF 2022 : Cross Objection filed against C.M.A(MD)No.359 of 2021 as against the judgment and decree made in M.C.O.P.No.1095 of 2014, dated 13.02.2020, on the file of the Motor Accidents Claims Tribunal, Special Court to deal with M.C.O.P cases, Tiruchirappalli.

C.M.A(MD)No.359 of 2021

For Appellant	:Mr.J.S.Murali
For Respondents 1 to 3	:Mr.S.Pugalendhi
For Respondent-4	:No appearance

CROSS.OBJ(MD)No.4 of 2022

For Appellant	:Mr.S.Pugalendhi
For Respondent-1	:Mr.J.S.Murali
For Respondent-2	:No appearance

COMMON JUDGMENT

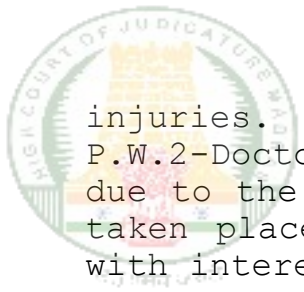
C.M.A(MD)No.359 of 2021 is directed against the judgment and decree made in M.C.O.P.No.1095 of 2014, dated 13.02.2020, on the file of the Motor Accidents Claims Tribunal, Special Court to deal with M.C.O.P cases, Tiruchirappalli.

2.Cross Objection(MD)No.4 of 2022 is filed against C.M.A(MD)No.359 of 2021 as against the judgment and decree made in M.C.O.P.No.1095 of 2014, dated 13.02.2020, on the file of the Motor Accidents Claims Tribunal, Special Court to deal with M.C.O.P cases, Tiruchirappalli.

3.The Civil Miscellaneous Appeal is filed by the Insurance Company challenging the award on the ground that the deceased has not died due to the accidental injuries and the quantum of compensation. Pending appeal, the husband of the deceased namely, the first Petitioner has died. The claimants have filed cross objection seeking enhancement of compensation.

4.Pending trial, the claim Petitioners, who are the legal heirs of the deceased Chinnammal, wife of the original claim Petitioner filed claim petition stating that the said Chinnammal had sustained injuries in the accident taken place on 10.6.2016 and subsequently died on 23.6.2012 due to the injuries sustained in the accident.

5.The Insurance Company has filed a counter statement denying the liability and also disputed the involvement of the vehicle in the accident and also disputed the manner of the accident besides raised a point that the deceased has not died due to the accidental



injuries. The claim petitioners have examined P.W.1, P.W.2 and P.W.2-Doctor and the Tribunal has held that the deceased had died due to the accidental injuries sustained in the accident which has taken place on 10.6.2012 and awarded compensation of Rs.6,76,500/- with interest at the rate of 7.5%p.a.

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6.The learned counsel for the appellant Insurance Company would contend that the Hero Honda Splendor Motor cycle bearing Registration No.TN 48 U 6430 was not involved in the accident and hence, the accident is not happened as described in the claim Petition. Further the First Information Report was registered after ten days from the date of the accident and hence the involvement of the vehicle is doubtful.

7.Heard the submission made by the learned counsel for the claimants in support of the finding rendered by the Tribunal and pleaded for enhancement of compensation under the conventional heads.

8.After hearing both parties and perusing the record, I find that the accident was happened on 10.6.2012 at about 16.30 hours in Trichy Salem Main Road near Adaikalam Kathamman Kovil at Killiyanoor Village and the involvement of the motor cycle bearing Registration No.TN 48 U 6430 belonging to the first respondent dashed on the deceased Chinnammal and she has sustained injuries in the accident is not disputed by the first respondent. As per the first respondent, the deceased herself was negligent as she has not followed the traffic fules. The second respondent disputed that the above motor cycle belonging to the first respondent was not involved in the accident and they contended that the motor cycle has been introduced by the Petitioners in collusion with the owner of the vehicle, the first respondent.

9.Ex.P1 is the copy of the First Information Report.The accident was happened on 10.6.2012 at 16.40 hours. Though the complaint was submitted by P.W.1 before Vathalai Police only on 20.12.2012 at 17.30 hours, the reason for delay is also noted in the FIR that when the Vathalai Police has come over to hospital, in which, the deceased had taken treatment as inpatient, P.W.1 requested the Police not to take any action in the matter, since the accused is his relative. Subsequently, the compromise talk between them has not given any fruitful result and so P.W.1 has submitted the complaint before the Vathalai Police. The reason for delay in submitting the complaint is believable.

10.The second respondent has examined the present Special Inspector of Police of Vathalai Police Station, through him the copy of the case records in Crime No.91 o 2012 of Vathalai Police Station was was marked as Ex.X3. As the concerned Investigation Officer has

<https://hccvires.courts.mv.it/sect>

the final report in time, the Musiri Judicial



Magistrate has closed the case under Section 468(2) of Criminal Procedure Code on the point of limitation.

11. Perused Ex.P5 is the Discharge summary of the deceased Chinnammal, which was maintained by the Government Hospital and Ex.P7 is the rough sketch prepared by the Sub-Inspector of Police. Ex.X1 and Ex.X2 are the treatment records. It is specifically mentioned in Ex.P7 that the place of occurrence is on the northern side of the tar road.

(b). Though the Insurance Company has not disputed the accident, they have not submitted any proof to prove their plea. On a combined reading of the oral evidence of P.W.1 coupled with Ex.P5 discharge summary and Ex.P7 rough sketch, I find that the accident has taken place due to the rash and negligent driving on the part of the driver of the two wheeler.

(c). According to the Insurance Company, the injured has not sustained injury in the road traffic accident. I find that a perusal of Ex.X1, the Doctor noted that it is a (RETA) Road Transport Accident. In the accident Register attached with Ex.X1 records also, it is noted that it is a case of RTA while walking on the road side and the deceased was hit by a two wheeler on 10.6.2012. P.W.3 is the Professor and Head of Ortho Department in Government Hospital at Trichy. He stated in his evidence that the deceased Chinnammal was admitted in the Hospital as inpatient on 17.6.2012 in the night at 8.40 p.m. At the time of re-admission, the deceased stated before the duty Doctor that she got injury on the head due to fallen down one week before on 10.6.2012 and suturing done one week before. She was discharged on 23.6.2012 in the night at 7.00 p.m.

(d). Further P.W.3 pointed out that there is a chance for death due to the injury caused on her in head and hip. Through P.W.3, the treatment particulars file was marked as Ex.X2. Ex.P2 is the copy of the Death Certificate of the deceased Chinnammal in which her date of death is noted as 23.6.2012. It reveals that immediately after discharge from the Hospital of Annai Gandhi Memorial Government Hospital at Trichy, the deceased was died. It remains to be stated that even in few hours of discharge, it appears from records that she died and hence, postmortem was not conducted. The discharge summary Ex.P5 clearly states that the date of admission as 17.6.2012, the date of discharge as 23.6.2012 and on the same day, she died and hence on the above factual position, the non-conducting of postmortem is not a point to be decided and cannot be put against the claim petitioners.

(e). In the decision in ***Managing Director, Tamil Nadu State Transport Corporation, Dindigul .vs. Kasiraman and four others***

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reported in 2014(4) TN MAC 526, Madurai Bench of Madras High Court held in a similar set of facts of the case in which it is observed that "the deceased was in continuous treatment till death proved, it can be inferred that the death was on account of injuries sustained in the accident" and hence, I find that in view of the sufficient proof available on record and the date of discharge and time of death are very narrow and injury sustained are so severe as recorded in Ex.P5 discharge summary, I find that the deceased had sustained injury in the accident despite treatment, she succumbed to the injuries. Since her fate is known to the family members, they got her discharged from the Government Hospital and hence I find that there is a clear nexus between the injury sustained in the accident and the death of the deceased and I hold that she died due to the accidental injuries.

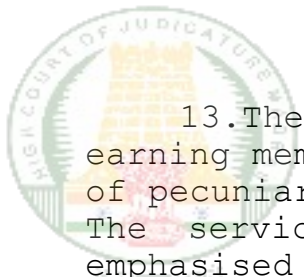
12(a). Some of the claim petitioners are the daughters. It is trite law that legal representatives of the deceased representing his surviving estates are entitled to claim compensation and hence, married daughters also to be the claim petitioner and the claim petition is as such maintainable.

(b). So also, it is trite proposition of law that the dependency of the daughters need not always be financial dependency but can also be physical, moral and psychological dependency. Merely because, daughter has got married, the same cannot be a ground to reject her claim Petition seeking compensation for the death of the mother and hence married daughters are also entitled to file claim petition under the Motor Vehicles Act.

(c). Therefore, I find that in view of the evidence to the effect that the specific evidence of P.W.1 that since the accused is his close relative, he had requested the Police not to take any action in this matter and subsequently the compromise talks has been taken, but the same was not resulted in a fruitful manner. So they filed a complaint before the Vathalai Police Station resulted in delay in filing Ex.P1 FIR. On the facts and circumstances of the case, I find that the Police Constable who had produced Ex.X3 had categorically stated that for want of filing of the charge sheet, the case was closed by the Judicial Magistrate in exercise of his/her power under Section 468(2) of Cr.P.C on the point of limitation and hence, the reason for delay in filing the complaint is found to be satisfactorily explained by P.W.1.

(d). Hence, the involvement of the vehicle, the factum of the accident and manner of the accident, the evidence relating to negligence on the part of the driver of the two wheeler, as held by the Tribunal is just and proper and the same is hereby confirmed.

12. On the point of quantum of compensation, both the parties are heard.



13.The deceased is a house wife. Merely because, she is not an earning member that cannot be taken as a ground to reject the award of pecuniary loss to the legal representatives of the said deceased. The service rendered by the mother of the family has been emphasised sufficiently in many of the judicial pronouncements. Accordingly, I find that notional income of Rs.6000/- would met the ends of justice. Since the deceased is 60 years old, 10% of the income has to be added as future prospects and hence the total income comes to Rs.6000/-+Rs.600/- =Rs.6600/- and multiplier of '9' to be adopted and since there are four dependants/claim petitioners, $1/4^{th}$ of the income is to be deducted and accordingly, Rs.6600/- x $12 \times 9 \times 3/4 = 5,34,600/-$ and for parental consortium, all the three claim petitioners are each entitled to Rs.40,000/- in total, they are entitled to Rs.1,20,000/-Rs.25,000/- awarded towards pain and suffering stands vacated and the compensation under the heading love and affection at Rs.50,000/- stands vacated. Further this Court awards a sum of Rs.15,000/- for transportation, loss of estate Rs.15,000/- and funeral expenses at Rs.15,000/- and as such, the total compensation is arrived at Rs.6,99,600/-with interest at the rate of 7.5%p.a.

14.In fine, the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed and the Cross-objection filed by the claim petitioners for enhancement of compensation is partly allowed to the limited extent as indicated above, enhancing the compensation from Rs.6,76,500/- to Rs.6,99,600/- with interest at 7.5%p.a from the date of claim petition till the date of realisation. The first respondent/Insurance Company is directed to deposit the modified award amount with proportionate accrued interest and costs, less the award amount already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw their share in the award amount so deposited,with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal by filing necessary application before the Tribunal.The claimants are directed to pay the additional court fee for the enhanced award amount within a period of two weeks from the date of judgment and decree, if any, shall be drafted only after payment of the additional court fee by the claim petitioners in respect of the enhanced award amount. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

vsn

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To
The Judge,
The Motor Accidents Claims Tribunal,
Special Court to deal with M.C.O.P cases,
Tiruchirappalli.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.J.S. MURALI, Advocate (SR-19513[F] dated 19/04/2022)

COMMON JUDGMENT IN
C.M.A(MD)No.359 of 2021
and
CROSS.OBJ(MD)NO.4 OF 2022
and
C.M.P(MD)No.2957 of 2021
18.04.2022

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